
By: **Delegates Murray, Barkley, Benson, Bronrott, Brown, Carter, Costa, Dumais, Franchot, Goodwin, Gordon, Hammen, Haynes, Heller, Hixson, Hubbard, Kaiser, King, Lee, Montgomery, Oaks, Patterson, Rosenberg, Rudolph, Smigiel, Taylor, V. Turner, and ~~Vallario~~ Vallario, Hurson, Boteler, Boutin, Bromwell, Donoghue, Elliott, Goldwater, Kach, Mandel, McDonough, Morhaim, Nathan-Pulliam, Pendergrass, and Weldon**

Introduced and read first time: February 11, 2004
Assigned to: Health and Government Operations

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 9, 2004

CHAPTER _____

1 AN ACT concerning

2 **Procurement - Debarment**

3 FOR the purpose of adding a circumstance under which certain persons may be
4 debarred from entering into certain contracts with the State; and generally
5 relating to procurement and debarment.

6 BY repealing and reenacting, without amendments,
7 Article - State Finance and Procurement
8 Section 13-211 and 16-310
9 Annotated Code of Maryland
10 (2001 Replacement Volume and 2003 Supplement)

11 BY repealing and reenacting, with amendments,
12 Article - State Finance and Procurement
13 Section 16-203(c)
14 Annotated Code of Maryland
15 (2001 Replacement Volume and 2003 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
17 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - State Finance and Procurement**

2 13-211.

3 (a) In this section, "procurement official" means a procurement officer or an
4 individual who participates in the drafting of specifications for procurement.

5 (b) During the conduct of a procurement, a competing contractor, or any
6 officer, employee, representative, agent, or consultant of any competing contractor,
7 may not knowingly:

8 (1) make any offer or promise of future employment or business
9 opportunity to, or engage in any discussion of future employment or business
10 opportunity with, any procurement official of the agency conducting the procurement;

11 (2) offer, give, or promise to offer or give any money, gratuity, or other
12 thing of value to any procurement official of the agency conducting the procurement;
13 or

14 (3) solicit or obtain from any officer or employee of an agency conducting
15 the procurement, before the award of a contract, any proprietary or source selection
16 information regarding the procurement.

17 16-203.

18 (c) A person may be debarred from entering into a contract with the State:

19 (1) if the Board finds that the person was established or operates in a
20 manner designed to evade the application of this title or to defeat the purpose of this
21 title;

22 (2) if the person is a successor, assignee, subsidiary, or affiliate of a
23 person who is debarred or suspended;

24 (3) for one of the following violations of a contract provision if the Board
25 believes it to be serious enough to justify debarment:

26 (i) the deliberate failure, without good cause, to perform in
27 accordance with the specifications, or within the time limit, provided in a contract; or

28 (ii) within the preceding 5 years, the failure to perform or of
29 unsatisfactory performance in accordance with the terms of one or more contracts,
30 unless the failure to perform or unsatisfactory performance was caused by acts
31 beyond the control of the person; [or]

32 (4) IF THE PERSON IS A COMPETING CONTRACTOR, OR ANY OFFICER,
33 EMPLOYEE, REPRESENTATIVE, AGENT, OR CONSULTANT OF ANY COMPETING
34 CONTRACTOR WHO VIOLATES § 13-211 OF THIS ARTICLE; OR

35 [(4)] (5) for any other cause that the Board determines to be so serious
36 as to affect the integrity of the procurement process.

1 16-310.

2 (a) If the conviction that is the basis for a debarment or suspension is reversed
3 or otherwise rendered void, the debarment or suspension terminates automatically.

4 (b) (1) Any person debarred under § 16-202 of this title may, after a period
5 of 5 years from the date of the debarment, petition the Board for removal of the
6 debarment.

7 (2) Any person debarred under § 16-203 of this title may petition the
8 Board for removal of the debarment, after the expiration of:

9 (i) one-half of the period of debarment; or

10 (ii) 5 years.

11 (c) (1) The Board shall consider all petitions received under subsection (b) of
12 this section.

13 (2) Within 90 days after receiving a petition under subsection (b) of this
14 section, the Board shall determine in its discretion whether to conduct a hearing
15 regarding the petition. If the Board decides to conduct a hearing, it shall conduct the
16 hearing in accordance with Title 10, Subtitle 2 of the State Government Article.

17 (3) The Board shall notify the person of its decision whether it will
18 conduct a hearing regarding the petition.

19 (d) In making its determination whether the debarment should be removed,
20 the Board shall conclude whether the integrity of the contracting process and the best
21 interests of the State would be served by continuing the debarment. In making its
22 determination, the Board shall consider relevant factors including those listed in §
23 16-306(a) of this subtitle.

24 (e) Upon making its determination, the Board shall give written notice to the
25 petitioner that the debarment is removed or continued.

26 (f) The time for any hearing or determination by the Board under this section
27 may be extended by the Board upon a showing of good cause.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2004.

